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9 Attorneys for Defendants San Diego Refrigerated  
Services, doing business as Harborside

10 Refrigerated Services, doing business as

Harborside; San Diego Refrigerated Services, Inc.

11 doing business as San Diego Terminals and Pla-Art

International, Inc. doing business as San Diego

12 Cold Storage, also known as, SDCold, doing

business as San Diego Cold, doing business as San

13 Diego Ice & Cold Storage and Miguel Cueva

14 **UNITED STATES DISTRICT COURT**

15 **SOUTHERN DISTRICT OF CALIFORNIA**

16  
17 CATLIN UNDERWRITING AGENCIES  
LIMITED,

18 Plaintiff,

19 v.

20 SAN DIEGO REFRIGERATED SERVICES,  
21 INC. D/B/A HARBORSIDE D/B/A SAN  
DIEGO TERMINALS, PLA-ART  
22 INTERNATIONAL D/B/A SAN DIEGO  
COLD STORAGE, SAN DIEGO COLD  
23 STORAGE, INC., MIGUEL CUEVA A/K/A  
MIGUEL TAMAYO, SERGIO HERNANDEZ,  
24 MARCUS FOODS, INC., and DOES 1  
through 100, Inclusive ,

25 Defendants.  
26

CASE NO. 08-CV-0173 WQH (JMA)

Complaint Filed: January 29, 2008

**MIGUEL CUEVA'S ANSWER TO  
COMPLAINT AND COUNTERCLAIM FOR  
DECLARATORY JUDGMENT**

**AND**

**DEMAND FOR JURY**

**ANSWER TO COMPLAINT**

**NATURE OF DISPUTE**

1. Miguel Cueva admits only that the entities identified in this paragraph are among the named insureds under the policy. Except as specifically admitted, Cueva denies the remaining allegations in this paragraph.

**PARTIES**

2. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

3. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

4. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

5. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

6. Cueva denies that he is also known as Miguel Tamayo. Cueva admits that he resides in California.

7. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the remaining allegations in this paragraph and, accordingly, denies them.

8. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

**JURISDICTION AND VENUE**

9. Cueva admits the allegations in the paragraph.

10. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

11. Cueva admits that plaintiff alleges that venue in this district is proper. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegation in this paragraph, and, accordingly, denies them.

**FACTUAL ALLEGATIONS**

**A. INSURANCE POLICY**

12. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

13. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

14. Cueva states that the policy speaks for itself and denies the allegations in this paragraph.

15. Cueva states that the policy speaks for itself and denies the allegations in this paragraph.

16. Cueva states that the policy speaks for itself and denies the allegations in this paragraph.

17. Cueva states that the policy speaks for itself. Cueva admits that the cited language appears at Section G, Paragraph 1 of the policy.

**B. RELEASE OF MARCUS FOODS PRODUCT**

18. Cueva objects to plaintiff's naming him as a defendant since Cueva is only an employee; he has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

19. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

20. Cueva has neither knowledge sufficient to form a belief about the truth of the allegations about what Marcus believed and accordingly denies them. Except as specifically admitted, Cueva denies the remaining allegations in this paragraph.

21. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

22. Cueva has neither knowledge nor information sufficient to form a belief about the truth of the allegations in this paragraph and, accordingly, denies them.

23. Cueva denies the allegations in this paragraph.

1           24.     Cueva denies the allegations in this paragraph.

2           25.     Cueva believes that during 2006 Del Rancho Foods was a customer of  
3 Marcus. Except as specifically admitted, Cueva denies the remaining allegations in this  
4 paragraph.

5           26.     Cueva has neither knowledge nor information sufficient to form a belief about  
6 the truth of the allegations in this paragraph and, accordingly, denies them.

7           27.     Cueva denies that plaintiff has accurately quoted the Memo Of Understanding.  
8 Cueva states that the document speaks for himself.

9           28.     Cueva has neither knowledge nor information sufficient to form a belief about  
10 the truth of the allegations in this paragraph and, accordingly, denies them.

11          29.     Cueva has neither knowledge nor information sufficient to form a belief about  
12 the truth of the allegations in this paragraph and, accordingly, denies them.

13          30.     Cueva has neither knowledge nor information sufficient to form a belief about  
14 the truth of the allegations in this paragraph and, accordingly, denies them.

15          31.     Cueva has neither knowledge nor information sufficient to form a belief about  
16 the truth of the allegations in this paragraph and, accordingly, denies them.

17          32.     Cueva has neither knowledge nor information sufficient to form a belief about  
18 the truth of the allegations in this paragraph and, accordingly, denies them.

19          33.     Cueva has neither knowledge nor information sufficient to form a belief about  
20 the truth of the allegations in this paragraph and, accordingly, denies them.

21          34.     Cueva has neither knowledge nor information sufficient to form a belief about  
22 the truth of the allegations in this paragraph and, accordingly, denies them.

23          35.     Cueva has neither knowledge nor information sufficient to form a belief about  
24 the truth of the allegations in this paragraph and, accordingly, denies them.

25          36.     Cueva has neither knowledge nor information sufficient to form a belief about  
26 the truth of the allegations in this paragraph and, accordingly, denies them.

27          37.     Cueva has neither knowledge nor information sufficient to form a belief about  
28 the truth of the allegations in this paragraph and, accordingly, denies them.

1 **C. MARCUS FOOD COMPLAINT**

2 38. Cueva admits only that Marcus filed the referenced complaint against SDRS,  
3 SDCS, himself, Sergio Hernandez and Does 1-100 on May 10, 2006 and that a true and  
4 accurate copy of the complaint is attached as Exhibit C to plaintiff's complaint. Except as  
5 specifically admitted, Cueva denies the remaining allegations in this paragraph.

6 39. Cueva admits only that plaintiff Marcus has made such allegations, among  
7 others, in its complaint. Cueva denies liability for the claims asserted against him by Marcus  
8 in the Marcus law suit and denies the remaining allegations in this paragraph.

9 40. Cueva denies that plaintiff has accurately quoted the cited portions of the  
10 complaint filed by Marcus against defendants on May 10, 2007. Cueva denies liability for  
11 the claims asserted against him by Marcus in the Marcus law suit and state that the  
12 complaint speaks for himself.

13 41. Cueva has neither knowledge nor information sufficient to form a belief about  
14 the truth of the allegations in this paragraph and, accordingly, denies them.

15 42. Cueva has neither knowledge nor information sufficient to form a belief about  
16 the truth of the allegations in this paragraph and, accordingly, denies them.

17 43. Cueva has neither knowledge nor information sufficient to form a belief about  
18 the truth of the allegations in this paragraph and, accordingly, denies them.

19 44. Cueva has neither knowledge nor information sufficient to form a belief about  
20 the truth of the allegations in this paragraph and, accordingly, denies them.

21 45. Cueva has neither knowledge nor information sufficient to form a belief about  
22 the truth of the allegations in this paragraph and, accordingly, denies them.

23 46. Cueva has neither knowledge nor information sufficient to form a belief about  
24 the truth of the allegations in this paragraph and, accordingly, denies them.

25 **COUNT I**

26 **(IN THE ALTERNATIVE TO COUNT III)**  
27 **DECLARATION OF NO COVERAGE BECAUSE NO OCCURRENCE**

28 47. Cueva incorporates by this reference his answers to paragraphs 1 through 46,

1 above.

2 48. Cueva denies the allegations in this paragraph.

3 49. Cueva denies the allegations in this paragraph.

4 50. Cueva denies the allegations in this paragraph.

5 51. Cueva denies the allegations in this paragraph.

6 52. Cueva denies the allegations in this paragraph.

7 53. Cueva denies the allegations in this paragraph.

8 54. Cueva denies liability to Marcus for the matters alleged in the Marcus

9 complaint. In the event that any one or more defendant insured under the policy is found  
10 liable to Marcus for the allegations in the Marcus complaint, which liability Cueva denies,  
11 those defendants are entitled to be indemnified by CATLIN under the policy. Cueva denies  
12 the remaining allegations in this paragraph.

13 55. Cueva admits that plaintiff is seeking a declaration that there is no coverage  
14 but denies that plaintiff is entitled to such a declaration and denies the remaining allegations  
15 in this paragraph.

## 16 COUNT II

### 17 (IN THE ALTERNATIVE TO COUNT III) 18 **DECLARATION OF NO COVERAGE BECAUSE SAN DIEGO 19 ACTED ONLY WILLFULLY**

20 56. Cueva incorporates by this reference his answers to paragraphs 1 through 55,  
21 above.

22 57. Cueva has neither knowledge nor information sufficient to form a belief about  
23 the truth of the allegations in this paragraph and, accordingly, denies them.

24 58. Cueva denies the allegations in this paragraph.

25 59. Cueva denies the allegations in this paragraph.

26 60. Cueva admits that plaintiff is seeking such a declaration but denies that  
27 plaintiff is entitled to one and denies the remaining allegations in this paragraph.

28 ///

///

**COUNT III**

**(IN THE ALTERNATIVE TO COUNTS I, II, AND IV)  
DECLARATION OF NO COVERAGE BECAUSE SAN DIEGO BREACHED  
ITS DUTIES UNDER THE POLICY'S NOTICE PROVISIONS**

61. Cueva incorporates by this reference his answers to paragraphs 1 through 60, above.

62. Cueva denies the allegations in this paragraph.

63. Cueva denies the allegations in this paragraph.

64. Cueva denies the allegations in this paragraph.

65. Cueva denies the allegations in this paragraph.

66. Cueva denies the allegations in this paragraph.

67. Cueva denies that plaintiff has no duty to defend the defendants as alleged. In the event one or more defendant covered under the policy is found liable to Marcus in relation to the allegations in the Marcus complaint, which liability Cueva denies, those defendants are entitled to be indemnified by CATLIN under the policy.

68. Cueva admits plaintiff seeks such a declaration but denies that plaintiff is entitled to one and denies the remaining allegations in this paragraph.

**COUNT IV**

**(IN THE ALTERNATIVE TO COUNT III)  
DECLARATION THAT EXCLUSIONS 7, 10, AND 12 EXCLUDE  
COVERAGE FOR MARCUS FOODS [sic] COMPLAINT**

69. Cueva incorporates by this reference his answers to paragraphs 1 through 68, above.

70. Cueva states that the policy speaks for himself. Cueva denies the allegations in this paragraph.

71. Cueva denies the allegations in this paragraph.

72. Cueva denies the allegations in this paragraph.

73. Cueva denies the allegations in this paragraph.

74. Cueva denies the allegations in this paragraph.

75. Cueva denies that plaintiff has no duty to defend the defendants in relation to

1 the allegations in the Marcus complaint. In the event one or more defendant covered under  
2 the policy is found liable to Marcus in relation to the allegations in the Marcus complaint,  
3 which liability Cueva denies, those defendants are entitled to be indemnified by plaintiff  
4 under the policy.

5 76. Cueva admits that plaintiff is seeking such a declaration but denies that  
6 plaintiff is entitled to one and denies the remaining allegations in this paragraph.

7 WHEREFORE, Miguel Cueva prays for judgment against Catlin Underwriting  
8 Agencies, Ltd. as follows:

- 9 1. For judgment in his favor as an insured under the policy;  
10 2. For a defense under the policy in relation to Marcus' lawsuit;  
11 3. For reimbursement for any attorneys fees and other expenses he incurs  
12 defending the Marcus lawsuit; and  
13 4. For such other and further relief as this Court deems just and proper.

14  
15 DATED: May 23, 2008

SOLOMON WARD SEIDENWURM & SMITH, LLP

16  
17 By: /s/ Edward J. McIntyre  
EDWARD J. MCINTYRE

18 AND

19 JOHN F. HORVATH  
20 HORVATH & WEAVER, P.C.  
21 Attorneys for Defendants San Diego  
22 Refrigerated Services, doing business as  
23 Harborside Refrigerated Services, doing  
24 business as Harborside; San Diego Refrigerated  
25 Services, Inc. doing business as San Diego  
26 Terminals and Pla-Art International, Inc. doing  
27 business as San Diego Cold Storage, also  
28 known as, SDCold, doing business as San  
Diego Cold, doing business as San Diego Ice &  
Cold Storage and Miguel Cueva



**DEMAND FOR JURY**

Miguel Cueva demands a jury trial of all claims triable by a jury.

DATED: May 23, 2008

SOLOMON WARD SEIDENWURM & SMITH, LLP

By: /s/ Edward J. McIntyre  
EDWARD J. MCINTYRE

AND

JOHN F. HORVATH  
HORVATH & WEAVER, P.C.  
Attorneys for Defendants San Diego  
Refrigerated Services, doing business as  
Harborside Refrigerated Services, doing  
business as Harborside; San Diego Refrigerated  
Services, Inc. doing business as San Diego  
Terminals and Pla-Art International, Inc. doing  
business as San Diego Cold Storage, also  
known as, SDCold, doing business as San  
Diego Cold, doing business as San Diego Ice &  
Cold Storage and Miguel Cueva

**CERTIFICATE OF SERVICE**

I caused the **MIGUEL CUEVA'S ANSWER TO COMPLAINT AND COUNTERCLAIM FOR DECLARATORY JUDGMENT** to be served in the following manner:

**Electronic Mail Notice List**

The following are those who are currently on the list to receive e-mail notices for this case.

**Electronic Mail Notice List**

Jack Chia-Ko Hsu, Esq. jhsu@christensenehret.com Christensen Ehret LLP 222 West Adams Street, Suite 2170 Chicago, IL 60606 Telephone: (312) 214-5355 Facsimile: (312) 214-1014 Attorneys for Plaintiff Catlin Underwriting Agencies Limited	Kevin Gerry, Esq. kevingerry@earthlink.net The Law Offices of Kevin Gerry A Professional Corporation 1001 Olive Street Santa Barbara, CA 93103 Telephone: (310) 275-1620 Attorneys for Defendant Marcus Food Co.
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**Manual Notice List**

The following is the list of attorneys who are not on the list to receive e-mail notices for this case (who therefore require manual noticing).

None.

*/s/ Edward J. McIntyre*  
EDWARD J. MCINTYRE